

STATE OF MICHIGAN
COURT OF APPEALS

In re LUND ESTATE.

NATIONAL CITY BANK,

Plaintiff-Appellant,

v

ESTATE OF ROBERT D. LUND, JR., by
CHRISTINE E. LUND, Personal Representative,

Defendant-Appellee.

UNPUBLISHED
November 7, 2006

No. 264044
Grand Traverse Probate Court
LC No. 04-027847-DE

NATIONAL CITY BANK,

Plaintiff-Appellant,

v

BOB LUND MOTORS, INC., and the ESTATE
OF ROBERT D. LUND, JR., by CHRISTINE E.
LUND, Personal Representative,

Defendants-Appellees.

No. 264045
Grand Traverse Circuit Court
LC No. 05-024377-CK

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the probate court order denying its request for an extension of time to commence a proceeding on its claim against defendant estate. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Robert D. Lund, Jr., died on December 5, 2003. Defendant, the personal representative of the estate,¹ published a notice to creditors in the *Traverse City Record-Eagle* on April 22,

¹ Defendant Bob Lund Motors, Inc. did not file a brief or appear in this appeal. The term

2004. Defendant also sent a notice to known creditors, including plaintiff. Plaintiff mailed two statements of its claim in response to the notices to creditors. Plaintiff's claim against the estate was based on a guaranty of indebtedness signed by the decedent for a business line of credit extended to Bob Lund Motors, Inc. Defendant disallowed both statements of plaintiff's claim. Counsel for both parties communicated with each other following the two disallowances. Plaintiff was aware there was a deadline to commence a lawsuit based on the disallowed claims. Both parties agreed by e-mail to extend the deadline for commencement of an action to November 30, 2004.

On January 20, 2005, plaintiff filed a lawsuit on the claim in the circuit court. That lawsuit was filed against defendant Bob Lund Motors, Inc. and the Estate of Robert D. Lund, Jr. Defendant responded with a motion for summary disposition. The circuit court removed the case to the probate court to be joined with the estate matter. The probate court ultimately denied plaintiff's request for an extension of time to file an action on its claim. The probate court found that all parties were represented by counsel, that all parties knew of the time deadlines, and that plaintiff did not meet the deadline despite having received an extension.

On appeal, plaintiff notes that a court can grant an extension of the filing deadline to prevent an injustice. In this case, plaintiff argues that an injustice would occur if it cannot collect over \$60,000 on a debt guaranteed by the decedent given that the estate did not suffer any prejudice from the delay. Questions involving statutory interpretation are reviewed de novo on appeal. *In re Estate of Weber*, 257 Mich App 558, 561; 669 NW2d 288 (2003). The applicable statute provides as follows:

Except as otherwise provided in this subsection, if a claim is presented under subsection (1)(a), a proceeding on the claim shall not be commenced more than 63 days after the personal representative delivers or mails a notice of disallowance to the claimant. For a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 63-day period or, to avoid injustice, the court, on petition, may order an extension of the 63-day period, but an extension shall not be consented to or ordered if the extension would run beyond the applicable statute of limitations. [MCL 700.3804(2).]

The statute plainly states that a court *may* extend the 63-day period to avoid injustice. This Court noted in *Weber* that

the term "may" presupposes discretion and does not mandate action. Thus, according to the plain language of MCL § 700.3804(2), the probate court is not required to grant an extension on an untimely claim even if injustice would result. In other words, the decision to grant an extension lies solely within the discretion of the probate court. [*Weber*, *supra* at 562 (internal citations omitted).]

defendant as used throughout this opinion will refer only to Christine E. Lund, the personal representative of the Estate of Robert D. Lund, Jr.

Hence, the statute gives discretion to the court to extend the 63-day period if there is an injustice to be avoided. “[P]ursuant to the *Random House Webster’s Unabridged Dictionary* (1998), ‘injustice’ is defined as the ‘violation of the rights of others, unjust or unfair action or treatment.’” *Id.*, at 562. An abuse of discretion is found where a result “is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion.” *Id.*, at 560.

In this case, plaintiff’s rights were not violated nor was plaintiff subjected to unjust treatment or actions because (1) it was represented by counsel, (2) it was aware there were deadlines to commence a proceeding on a disallowed claim, and (3) it received correspondence via e-mail specifically agreeing to extend the deadline to November 30, 2004. Despite all that, plaintiff did not file its complaint until January 20, 2005. Accordingly, we hold that the probate court did not abuse its discretion in denying plaintiff’s request for an extension of the deadline.

Defendant requests this Court to impose sanctions against plaintiff for bringing vexatious proceedings in violation of MCR 7.216(C). Damages or other disciplinary action may be taken when an appeal or proceedings in an appeal are determined to be vexatious. MCR 7.216(C). Such a determination may be made at the Court’s own initiative “or on the motion of any party filed under MCR 7.211(C)(8).” MCR 7.216(C)(1). MCR 7.211(C)(8) states that “[a] party’s request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule.” MCR 7.211(C)(8). In this case, defendant’s request for sanctions was contained in its brief filed under MCR 7.212 and, therefore, does not constitute a motion as required by the applicable court rule. We decline to address the issue of sanctions because it was not properly brought before this Court.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio